



Signed and Filed: July 6, 2020

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
- and - ) Chapter 11  
PACIFIC GAS AND ELECTRIC COMPANY, ) Jointly Administered  
Debtors. )  
☐ Affects PG&E Corporation )  
☐ Affects Pacific Gas and )  
Electric Company )  
☒ Affects both Debtors )  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 (DM). )

**MEMORANDUM DECISION REGARDING MOTION TO APPOINT AN EXAMINER**

On June 4, 2020, this court held a video hearing on the "Motion for an Appointment of an Examiner of Voting Procedural Irregularities Pursuant to Section 1104(c) of the Bankruptcy Code and Bankruptcy Rule 2007.1" (the "Examiner Motion") (dkt. 7568) filed by Karen Gowins and "Many Wildfire Victim Creditors" ("Movants"). Movants allege that votes on the Joint Chapter 11 Plan of Reorganization ("Plan") filed (and amended) by Debtors

1 and the Shareholder Proponents were improperly or inadequately  
2 solicited from wildfire victims, and an examiner should  
3 investigate the voting process. For the reasons set forth  
4 below, the court concludes that insufficient grounds exist to  
5 grant the relief sought by the Movants.

6 I. PROCEDURAL BACKGROUND

7 On May 19, 2020, Movants filed a motion for an order  
8 shortening time ("OST") (dkt. 7427) for a hearing on the  
9 Examiner Motion, which was appended as an exhibit to the motion  
10 for an OST. On May 22, 2020 the court granted the OST; it held a  
11 hearing on June 4, 2020. Objections were filed by Watts Guerra  
12 LLP (dkts. 7436 and 7706); Singleton Law Firm Fire Victim  
13 Claimants (dkt. 7724) and by Debtors (dkt. 7719). Debtors also  
14 filed a declaration by Christina F. Pullo ("Pullo"), a vice  
15 president of Prime Clerk LLC, the court-authorized claims and  
16 noticing agent for Debtors (dkt. 7720).<sup>1</sup> Following the June 4  
17 hearing, the court took the matter under advisement.

18 A significant development occurred the day after the  
19 hearing on the Examiner Motion. Counsel for the Official  
20 Committee of Tort Claimants (the "TCC") indicated at the June 5  
21 hearing on confirmation that it was conducting its own  
22 examination into the voting irregularities alleged by Movants.<sup>2</sup>

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23  
24 <sup>1</sup> As discussed later, Ms. Pullo testified and was cross-examined  
25 about the transmission of the Plan, the accompanying disclosure  
26 statement, and the ballots to all creditors, particularly with  
27 respect to the wildfire victims. See Transcript of the  
28 Confirmation Hearing held on May 27, 2020 (dkt. 7637).

<sup>2</sup> At the June 5 hearing, counsel for the TCC discussed the  
preliminary findings reached by his firm and other professionals  
retained by the TCC:

1 The TCC offered to provide the court with its findings and did  
2 so on June 5, 2020. See Preliminary Report of Official  
3 Committee of Tort Claimants' Investigation of Voting Results  
4 ("TCC Preliminary Report") filed on June 9, 2020 (dkt. 7847).  
5 After completing its investigation, the TCC filed its Final  
6 Report of Official Committee of Tort Claimants' Investigation of  
7 Voting Results ("TCC Final Report") on June 19, 2020 (dkt.  
8 8022).

9 II. DISCUSSION

10 Movants seek the appointment of an examiner to investigate  
11 purported irregularities in the voting process. All parties  
12 agree that the applicable provision governing this motion is  
13 section 1104(c) of the Bankruptcy Code, which provides:

14 (c) If the court does not order the appointment  
15 of a trustee under this section, then at any time  
16 before the confirmation of a plan, on request of a  
17 party in interest or the United States trustee, and  
18 after notice and a hearing, the court shall order  
the appointment of an examiner to conduct such an

19 I just wanted to inform you that, again, whether you  
20 appoint an examiner in [sic] subject to your  
21 discretion, but I wanted you to know that when these  
22 voting complaints came up about irregularities, we  
23 established a Baker review team, due diligence team,  
24 to work [with] Mr. Karotkin's firm and Prime Clerk.  
25 Mr. Karotkin's firm and Prime Clerk turned over all  
26 documents that we requested in order to investigate  
27 whether there were irregularities on a systemic  
28 basis and whether that affected the vote. We've  
gone through 75 percent of the data turned over by  
Weil, Gotshal, and Prime Clerk. And our preliminary  
conclusion was that we didn't see anything that we  
believed affected the 66 percent threshold though.

See Transcript of Hearing Held on June 5, 2020, at dkt.  
7843, pp. 178-79.

1 investigation of the debtor as is appropriate,  
2 including an investigation of any allegations of  
3 fraud, dishonesty, incompetence, misconduct,  
4 mismanagement, or irregularity in the management of  
the affairs of the debtor of or by current or former  
management of the debtor, if—

5 (1) such appointment is in the interests of  
6 creditors, any equity security holders,  
and other interests of the estate; or

7 (2) the debtor's fixed, liquidated, unsecured  
8 debts, other than debts for goods,  
9 services, or taxes, or owing to an  
insider, exceed \$5,000,000.

10 See 11 U.S.C. § 1104(c) (emphasis added).

11 While Congress did not define or set forth the parameters  
12 of the "as is appropriate" language, the legislative history  
13 provides some guidance:

14 Subsection [(c)] permits the court, at any time  
15 after the commencement of the case and on request of  
16 a party in interest, to order the appointment of an  
17 examiner, if the court has not ordered the  
18 appointment of a trustee. The examiner would be  
19 appointed to conduct such an investigation of the  
20 debtor as is appropriate under the particular  
21 circumstances of the case, including an  
22 investigation of any allegations of fraud,  
dishonesty, or gross mismanagement of the debtor of  
or by current or former management of the debtor.  
The standards for the appointment of an examiner are  
the same as those for the appointment of a trustee;  
the protection must be needed, and the cost and  
expense must not be disproportionately high.

23 H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 402 (1977) (emphasis  
24 added). See also *In re Residential Capital, LLC*, 474 B.R. 112,  
25 120-21 (Bankr. S.D.N.Y. 2012) (the appointment must be  
26 "appropriate under the particular circumstances" and "the  
27 protection must be needed"). Upon reviewing the TC Final  
28

1 Report, the court concludes that the protection of an examiner  
2 is not needed and is not appropriate under the circumstances.

3 As noted by TCC's counsel at the confirmation hearing, "the  
4 [Wildfire Victims] weren't necessarily asking for an examiner.  
5 They just wanted to know what the answer to the question [of  
6 possible disenfranchisement] was." See Transcript of Hearing  
7 Held on June 5, 2020, at dkt. 7843, pp. 178-79. The independent  
8 investigation by the TCC and its consultants into the alleged  
9 voting irregularities provides that answer, namely that they  
10 "have not identified any evidence of a voting issue in the data  
11 that the consultants believe would have affected the two thirds  
12 threshold required for approval by the fire victim class." See  
13 TCC Preliminary Report, dkt. 7847, ¶ 4.

14 In conducting its investigation, the TCC's counsel and  
15 consultants "made a number of assumptions about the voting data  
16 - even if those assumptions were extreme - in order to stress  
17 test the voting results." See TCC Final Report at dkt. 8022,  
18 pg. 2, lines 18-20. Even after assuming that all blank votes  
19 would be counted as rejections and that certain wildfire victims  
20 intended to be vote differently, the TCC's counsel and  
21 consultants again concluded that the two-thirds threshold for  
22 Plan approval by the wildfire victim class had been met. See  
23 TCC Final Report, dkt. 8022 at pg. 2, lines 20-28.

24 In determining that the voting irregularities alleged by  
25 Movants would not have changed the ultimate vote to accept the  
26 Plan by the wildfire victims, the TCC made five significant  
27 findings:

1       **Finding 1:** The data validates Debtors' tabulation of  
2       fire victims' votes (dkt. 8022 at pg. 5, lines 10-  
3       13);

4       **Finding 2:** The defective ballots, if tabulated,  
5       would not have affected the Debtors' meeting the  
6       two-thirds threshold required for acceptance of the  
7       Plan (*id.* at pgs. 5-8);

8       **Finding 3:** Duplication of votes, if any, would not  
9       have affected the Debtors' meeting the two-thirds  
10      threshold required for acceptance of the Plan (*id.*  
11      at pgs. 8-9);

12      **Finding 4:** Combining the effects of the defective  
13      and potentially duplicative ballots would not have  
14      affected the Debtors' meeting the two-thirds  
15      threshold required for acceptance of the Plan (*id.*  
16      at pgs. 9-10);

17      **Finding 5:** The TCC's counsel and consultants did not  
18      observe any evidence to support the allegation that  
19      Prime Clerk or Debtors failed to comply with the  
20      Solicitation Procedures Order (*id.* at pgs. 10-12).

21      Based on the TCC's investigation results, the appointment  
22      of an examiner would be unnecessarily duplicative and costly and  
23      thus inappropriate under section 1104(c). Appointment of an  
24      examiner would be futile as any findings would not affect the  
25      ultimate determination that more than half of those casting  
26      ballots holding at least two-thirds in dollar amount voted to  
27      accept the Plan. Consequently, the court finds that the  
28      appointment of an examiner is not necessary as such an  
29      examination would duplicate the efforts of the TCC and would  
30      result in "disproportionately high" costs. See H.R. Rep. No. 95-  
31      595.

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1        III. CONCLUSION

2            The court regrets that a small number of the wildfire  
3 victims felt disenfranchised for various reasons, including the  
4 complexity of the voting materials, the relocation of so many of  
5 those victims, and the misplacement or delayed receipt of many  
6 ballots and other materials. In cases of this complexity, such  
7 unfortunate occurrences are not uncommon. But the court is  
8 encouraged by the large number of claimants who did respond and  
9 whose votes were counted, both for and against confirmation of  
10 the Plan.

11           For the foregoing reasons, the court is denying the  
12 Examiner Motion, and entering an order to that effect  
13 concurrently with the issuance of the Memorandum Decision.

14                            **\*\*END OF MEMORANDUM DECISION\*\***